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HUMAN RIGHTS COMMITTEE

Forty-fourth session

SUMMARY RECORD OF THE 1140th MEETING

Held at Headquarters, New York,
on Monday, 6 April 1992, at 10 a.m.

Chairman: Mr. POCAR

later: Mr. El-SHAFEI (Vice-Chairman)

CONTENTS

Action by the General Assembly at its forty-sixth session

Preparatory activities relating to the World Conference on Human Rights

Consideration of reports by States parties under article 40 of the Covenant (continued)

Draft general comment regarding article 10 of the Covenant (continued)

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The meeting was called to order at 10.40 a.m.

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-SIXTH SESSION

1. Mr. ANDO, Rapporteur, introduced a document concerning action taken by the General Assembly at its forty-sixth session. Section (a) of the document concerned the annual report of the Human Rights Committee under article 45 of the Covenant and summarized the discussions held by the Third Committee at its 39th to 43rd meetings from 12 to 18 November 1991 concerning the fifteenth annual report of the Human Rights Committee. The Committee had been commended for its excellent work and for the significant progress it had made in implementing human rights standards, as well as for action taken in response to the situations in Iraq and Yugoslavia. Appreciation had been expressed for the Committee's useful general comments and its decision to update comments on articles 7 and 10 and to begin work on general comments on articles 18, 25 and 27. The increased attention given to the question of discrimination against minorities had also been welcomed.

2. Section (b) of the document concerned the effective implementation of international instruments on human rights, which had also been discussed by the Third Committee at its 39th to 43rd meetings. The vigilance and solidarity of the United Nations human rights bodies had been recognized and several delegations had welcomed the publication of the reporting manual and the adoption of the consolidated guidelines. Support had also been expressed for computerization and it had been suggested that the submission of reports could be simplified through the consideration of multiple reports presented together. It had been suggested that more attention should be given to publicizing the work of the committees concerned with human rights in order to raise public awareness of human rights instruments and support had been expessed for the holding of regional workshops on human rights instruments in preparation for the World Conference on Human Rights. Some delegations had expressed the view that the question of emergency humanitarian intervention should be examined more closely, with particular reference to the Committee's action in the cases of Iraq and Yugoslavia.

3. Section (c) dealt with the commemoration by the General Assembly of the twenty-fifth anniversary of the adoption of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and its Optional Protocol. The General Assembly had discussed the matter at the 73rd meeting of its forty-sixth session on 16 December 1991. It had noted the significant impact of the work of the Human Rights Committee on the review made by Governments of national law and practice.

4. Section (d) referred to the resolutions adopted by the General Assembly at its forty-sixth session, in particular resolution 46/113 entitled "International Covenants on Human Rights", resolution 46/111 entitled "Effective implementation of international instruments on human rights", including reporting obligations under international instruments on human rights, and resolution 46/81 adopted on the occasion of the twenty-fifth

(Mr. Ando)

anniversary of the adoption of the International Covenants on Human Rights, which urged all States that had not yet done so to become parties to the Covenants and Optional Protocols at the earliest moment.

5. Mr. EL-SHAFEI said that he would welcome clarification of the meaning of the statement in section (b) that the Committee could adopt new, more direct working methods, including interaction with relevant non-governmental organizations. He asked whether the statement referred to the Committee's work in connection with Iraq and Yugoslavia or to other matters.

6. Mr. ANDO said that the remark had no direct bearing on the Committee's work on Iraq or Yugoslavia but should be understood in more general terms.

7. Mr. HERNDL welcomed the support expressed for computerization, which was a matter of great importance. He also endorsed the view that additional staff should be provided to service the treaty bodies, since the resources of the Human Rights Committee were very stretched at the present time. He wanted to know what the holding of joint meetings between human rights bodies would involve. He asked whether the intention was to hold joint sessions of the treaty bodies themselves or meetings between their bureaux, special delegations or chairmen. He also asked for more details concerning the scope of the proposed resource room for the Centre for Human Rights.

8. Miss CHANET said that the points raised in the document should be given proper consideration, either by the Working Group on article 40 of the Covenant or by ad hoc working groups. The question of minorities was of particular importance and the Committee needed to speed up its work on the general comment on article 27, which was the only provision in force on the matter. She felt that the Committee had already responded to the suggestion that more direct working methods should be employed, although the question of working more closely with relevant non-governmental organizations required further study. The questions of fact-finding missions, emergency intervention and good offices also needed more detailed consideration and the Committee should put forward proposals and play an active role.

9. Finally, she wanted to know what was meant by the suggestion that the International Court of Justice should be asked to consider reservations lodged by State parties. She wondered exactly how that could be done.

10. The CHAIRMAN, replying to Mr. Ando's question about joint meetings, said that the aim was for representatives of different treaty bodies to meet in order to discuss questions of common interest, bearing in mind that the various human rights instruments overlapped to a certain extent. In that connection, he recalled that at its previous session the Committee had taken a decision in principle to appoint members to ensure liaison with other treaty bodies. The member concerned would report back to the Committee on issues being discussed by other treaty bodies which were relevant to its own work.

11. The proposal for a resource room was a long-standing recommendation by the meeting of persons chairing the human rights treaty bodies. The aim was

(The Chairman)

to make available a room in Geneva where certain relevant documentation would be immediately available for consultation by Committee members.

12. Mr. WENNERGREN, referring to the remarks in section (b) concerning successful implementation of the Committee's recommendations, pointed out that the Committee's rules of procedure did not reflect the way in which it now dealt with reports by State parties and contained no provisions at all concerning effective follow-up. He felt that the rules of procedure needed to be amended or supplemented. Perhaps the Working Group on article 40 of the Covenant could be asked to consider the matter and make relevant proposals.

13. Mr. ANDO welcomed Mr. Wennergren's suggestion. In reply to Miss Chanet's question concerning the International Court of Justice, he said that obviously the Committee could not consult the Court directly, but could only make a recommendation to the General Assembly, which could then request an advisory opinion. At the present juncture, it was no more than a theoretical possibility, but, given the number of reservations to the Covenant and the Optional Protocol lodged by certain countries, it was worthy of further consideration.

14. The CHAIRMAN drew the Committee's attention to Commission on Human Rights resolution 1992/14, adopted in February, which dealt with the status of the International Convenants on Human Rights. In paragraph 8 of the resolution, the Commission welcomed "efforts of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights to improve their methods of work" and, in paragraph 12, urged "States parties to take duly into account, in implementing the provisions of the Covenants, the observations made at the conclusion of the consideration of their reports in the Human Rights Committee and by the Committee on Economic, Social and Cultural Rights". In paragraph 9 of the same resolution, the Commission welcomed "the continuing efforts of the Human Rights Committee to strive for uniform standards in the implementation of the provisions of the International Covenant on Civil and Political Rights" and appealed "to other bodies dealing with similar questions of human rights to respect [those] uniform standards as expressed in the general comments of the Human Rights Committee".

15. Commission on Human Rights resolution 1992/14 was an invitation to the Committee to continue to pay special attention to states of emergency. Perhaps the Committee might consider asking States parties to submit special reports in cases of both official and de facto states of emergency.

16. In paragraph 18 of its resolution 1992/15, the Commission on Human Rights requested the Secretary-General to ensure that the United Nations Manual on Human Rights Reporting was available in all official languages at the earliest opportunity. Perhaps the Committee should take note of that request and ensure that the Manual was translated into all official languages as soon as possible.

17. With respect to coordination between the Human Rights Committee and other United Nations bodies, a point had been raised at the session of the

(The Chairman)

Subcommission on Prevention of Discrimination and Protection of Minorities regarding coordination with the Human Rights Committee. Paragraph 13 of the report of the Subcommission (E/CN.4/1992/46) dealt with that eventuality. He had discussed the matter with the Chairman of the Subcommission and had agreed that it might be useful to establish certain contacts between the two bodies. Perhaps the Committee could appoint a member responsible for liaison with the Subcommission.

18. Ms. KLEIN (Secretary of the Committee) said that the introduction of computers for use by the Human Rights Committee would be complementary to the computerization of the work of the Centre for Human Rights as a whole. A task force had undertaken a study of the matter, which had been approved by the Commission on Human Rights and the General Assembly. On 28 February 1992, the Secretary-General had sent out notes verbales seeking voluntary contributions from all Member States, particularly States parties to the various treaty bodies, for the establishment of a database. The database would cost approximately $500,000. Operating costs would be borne by the regular budget of the United Nations.

19. The database would facilitate the work of the members of treaty bodies and improve coordination among such bodies. The database would also be useful to States parties wishing to have access to information on their implementation of human rights treaties and would facilitate their preparation of reports.

20. Once sufficient voluntary contributions had been received, it would take about 18 months to establish the database in the International Instruments and Procedures Section of the Centre for Human Rights.

21. The CHAIRMAN said that, at the recent session of the Commission on Human Rights, a document from a non-governmental organization dealing with a view adopted by the Committee with respect to a particular case had been circulated. The document suggested that the Committee's views contradicted its decision on admissibility, and that the Committee should therefore clarify its views. In his view, however, the document misrepresented the Committee's views and he therefore believed that no clarification was necessary. In its annual report, the Committee should take note of the document. He suggested that the Commitee should revert to the matter at a future meeting.

PREPARATORY ACTIVITIES RELATING TO THE WORLD CONFERENCE ON HUMAN RIGHTS

22. The CHAIRMAN said that, since the second meeting of the Preparatory Committee for the World Conference on Human Rights was currently taking place at Geneva, the Committee should postpone its consideration of the item until its next session in July.

23. It was so decided.

24. Mr. El-Shafei (Vice-Chairman) took the Chair.

CONSIDERATION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Draft general comment regarding article 10 of the Covenant (continued) (CCPR/C/44/CRP.2)

25. The CHAIRMAN said that the draft general comment contained the suggestions and amendments that had been introduced by the members of the Committee at the current session.

Paragraphs 1 to 7

26. Paragraphs 1 to 7 were adopted.

Paragraph 8

27. Mr. WENNERGREN said that "States" should read "States parties", in accordance with usage in other paragraphs.

28. Paragraph 8, as orally amended, was adopted.

Paragraph 9

29. Paragraph 9 was adopted.

Paragraph 10

30. Miss CHANET said that one sentence of the text that had originally been agreed on had inadvertently been omitted from the general comment and should be restored. The sentence in question came between the first and second sentences.

31. Mr. DIMITRIJEVIĆ supported Miss Chanet's observation, pointing out that omission of that sentence would leave paragraphs 10 and 11 unclear as to the purpose of imprisonment.

32. The CHAIRMAN assured the Committee that the omitted sentence would be restored in the final text.

33. Paragraph 10 was adopted.

Paragraph 11

34. Mr. WENNERGREN suggested the addition of the words "education and" before "re-education", as some prisoners were illiterate and required basic education, rather than re-education.

35. Paragraph 11, as orally amended, was adopted.

Paragraph 12

36. Paragraph 12 was adopted.

37. Mr. MÜLLERSON said, with reference to the last sentence, that the year of adoption of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice should be specified, as well as the body which had adopted those rules. Inclusion of that information would help clarify the reference and facilitate efforts by States parties to familiarize themselves with the instrument in question.

38. Mr. DIMITRIJEVIĆ supported Mr. Müllerson's suggestion on the inclusion of the year of adoption, in conformity with the Committee's practice in its general comments, and suggested also that the slightly peremptory language should be amended to read "States parties are invited to indicate", as it was outside the competence of the Committee to impose such obligations upon States parties.

39. Mr. HERNDL noted that the respective years of adoption should also be included in paragraph 5, in order to assist States parties in locating those instruments, which had all been adopted at different times.

40. The CHAIRMAN agreed with Mr. Herndl's suggestion and said that the text of paragraph 5 would be amended accordingly.

41. Mr. WENNERGREN said that the word "maximum" in the sentence: "The Covenant does not indicate the maximum age of a juvenile offender" was misleading, as the minimum age was also a cause of concern, and he suggested, therefore, that it should be replaced with the word "relevant".

42. Mr. DIMITRIJEVIĆ agreed that the word "maximum" was misleading, but suggested that it should be omitted altogether, particularly since it was not represented in the French original.

43. Mr. AGUILAR said that a distinction should be observed between the age of criminal liability, on the one hand, and the age of majority, on the other, and he wondered whether the English wording "age of a juvenile offender" was not confusing.

44. The CHAIRMAN suggested that the sentence in question could be reworded: "The Covenant does not indicate the age of criminal liability".

45. Mr. MÜLLERSON said that the point at issue was not the age of criminal liability but the age of juveniles who were detained and he suggested, therefore, the wording: "The Covenant does not indicate the age of a juvenile offender who is detained."

46. Mr. WENNERGREN said that the term "juvenile offender" should be used in the same sense as it was used in article 10 of the Covenant and he suggested, accordingly, that the wording of the English, French and Spanish versions of the general comment should be in line with that of the respective versions of the Covenant.

47. Miss CHANET said that the Committee was attempting to redraft the paragraph without taking into account what had already been adopted. The decision had been to state, in paragraph 13, that the Covenant did not indicate what the age of criminal liability should be; that was to be determined by each State party in the light of the relevant social and cultural conditions. The Committee's intention had been to emphasize the age of criminal liability, which was not the same as the age of majority in penal matters. In France, for example, the age of criminal liability was 13, while the age of majority in penal matters was 18.

48. Mr. AGUILAR said that he agreed with Miss Chanet. Where the English text of article 10, paragraph 3, of the Covenant referred to "juvenile offenders", the Spanish version spoke of "menores delincuentes". A "menor delincuente" was a person who had committed an offence and who, because of his age, could not be tried under the law applicable to the adult population. In many countries, there were persons who were technically minors, but who were adults from the point of view of criminal law. The age of majority in penal matters was not necessarily the same as in civil matters.

49. Mr. MÜLLERSON said that article 10 dealt only with persons deprived of their liberty and had nothing to do with the age of criminal liability. What was important in that connection was the minimum, not the maximum, age, since in some countries, children of five or six were held to be criminally responsible. The maximum age was important when it was necessary to determine whether a person was a juvenile offender who should therefore be separated from incarcerated adults. He agreed with Mr. Wennergren that the Committee should use the terminology employed in article 10 of the Covenant, in other words, "juvenile persons" or "juvenile offenders", as in paragraph 3.

50. Mr. DIMITRIJEVIĆ said that the Committee was not faced with a drafting problem; rather, the decision before it was whether to incorporate in its draft general comment the broader issues of juvenile delinquency and the age of criminal liability, or to confine itself to the issue of detention. He believed that the Committee should adopt Mr. Müllerson's proposal and should limit itself to the terminology used in article 10. As a compromise, he suggested that the seventh sentence of paragraph 13 should read either "The Covenant does not indicate the maximum age of a juvenile offender" or "The Covenant does not define the term 'juvenile offender'". The Committee could then go on to suggest in the next sentence that persons under 18 should be treated as juvenile offenders.

51. Mr. WENNERGREN said that he supported the statements made by Mr. Müllerson and Mr. Dimitrijević. It was necessary to determine the age below which a criminally liable person should be segregated from adults; in some countries, that could be as high as 25.

52. Mr. AGUILAR said that what concerned him most was the term "juvenile offender", which in English referred specifically to criminal law. He agreed with Mr. Müllerson that it would be better not to refer to "juvenile offenders", but simply to "minor persons".

53. Miss CHANET said that article 10, paragraph 3, dealt only with the separation of juvenile and adult offenders; what the Committee should point out was that the age at which a person was no longer considered to be a juvenile offender was not indicated in the Covenant and was to be determined by each State. There was no need to reintroduce the concept of the age of criminal liability, which had been covered in the Committee's draft general comment on article 24. The problem was the use of the term "juvenile offender" in the English version, which referred to the age of criminal liability; a paraphrase should be found so that the term could be avoided.

54. Mr. AGUILAR suggested that if, on the other hand, the term "juvenile offenders" was to be retained in the English version, then the corresponding Spanish term should be "delincuentes juveniles" rather than "menores delincuentes".

55. Mr. SERRANO CALDERA said he agreed with Mr. Aguilar that the Spanish version of paragraph 13 was closer to the wording of the Covenant. He suggested that the seventh sentence of the paragraph should read as follows: "The Covenant does not indicate, for the purposes of article 10, paragraph 3, up to what age a prisoner shall be regarded as a juvenile offender."

56. The CHAIRMAN suggested that if the Committee wished to point out to States parties that article 10 did not specify the age of criminal liability, then the sentence should read: "The Covenant does not indicate the age of a juvenile."

57. Mr. DIMITRIJEVIĆ proposed that the seventh sentence should read: "The Covenant does not indicate the age of the juvenile persons concerned." In the following sentence, however, beginning with the words "While this is to be determined ...", the word "offenders" should be deleted and the words "or convicted" should be inserted after "accused", since a person did not become an offender merely by virtue of having been accused; he must first be convicted.

58. Mr. WENNERGREN said that he supported Mr. Dimitrijević's proposals, but felt that the sentence should read: "Article 10 does not ...", rather than "The Covenant does not ...".

59. Mr. AGUILAR said that he had difficulty understanding the relationship between article 6, paragraph 5, of the Covenant and article 10, paragraph 3; the former dealt with the age of criminal liability, while the latter dealt with the issue of detention, in other words, punishment. However, article 6, paragraph 5, stated clearly that the death penalty could not be imposed on persons under the age of 18.

60. Mr. WENNERGREN said that article 6, paragraph 5, meant that a person under the age of 18 who had been convicted of a crime should not receive the death penalty; it merely indicated the age below which capital punishment was not appropriate. He proposed that in paragraph 13 of the draft general comment, in the eighth sentence, the words "at least" should be added after the words "persons under the age of".

61. Mr. MÜLLERSON said that he did not fully agree with Mr. Aguilar. Article 6, paragraph 5, dealt with punishment for a crime, not with criminal liability. A 16-year-old could be convicted of murder under the Covenant, but could not be sentenced to death.

62. The CHAIRMAN suggested that Mr. Aguilar, Miss Chanet and Mr. Dimitrijević should consult informally with one another and should submit a final text to the Committee.

The meeting rose at 1.05 p.m.